

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOHN BAMFORTH, ALISE BAMFORTH,
JESSICA ENAMORADO, and CYNTHIA
LIERA,

Plaintiffs,

v.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant.

Case No.: 2:21-cv-00712-APG-BNW

Order Granting Motion to Dismiss

[ECF No. 13]

Plaintiffs John Bamforth, Alise Bamforth, Jessica Enamorado, and Cynthia Liera (collectively, “the insureds”) sue State Farm Mutual Automobile Insurance Company (State Farm) for its alleged failure to sufficiently reduce vehicle insurance premiums relative to reduced driving risks during the COVID-19 pandemic.¹ The insureds argue that, even after providing certain discounts, State Farm’s pandemic premiums were “excessive” under Nevada Revised Statutes (NRS) § 686B.050(1). They allege: (1) breach of contract; (2) breach of the implied covenant of good faith and fair dealing; (3) tortious bad faith; and (4) violation of the Nevada Deceptive Trade Practices Act (NDTPA). They also seek declaratory relief.

State Farm moves to dismiss all claims, arguing that enforcement of Nevada’s insurance code is reserved to the exclusive jurisdiction of the Nevada Division of Insurance (NDOI), the “filed-rate doctrine” bars this lawsuit, and the insureds fail to state plausible claims regardless of administrative bars. The insureds respond that I have jurisdiction to resolve legal claims

¹ The insureds sue on behalf of a putative class comprised of “[a]ll Nevada residents who were automobile insurance policyholders of . . . State Farm as of March 1, 2020, and who have thereafter continued to be State Farm automobile insurance policyholders.” ECF No. 2 at 10.

1 regardless of the NDOI's exclusive jurisdiction to enforce the insurance code, they do not
2 challenge any filed rates, and they allege plausible claims for relief.

3 I grant State Farm's motion to dismiss. The NDOI has exclusive jurisdiction to enforce
4 Nevada's insurance code, and the insureds fail to state any claims that do not rely on their efforts
5 to vindicate a section of the code. The parties are familiar with the facts, so I discuss them below
6 only insofar as they relate to my decision.

7 **I. ANALYSIS**

8 A properly pleaded complaint must provide a "short and plain statement of the claim
9 showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2); *Bell Atl. Corp. v. Twombly*,
10 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed factual allegations, it demands
11 more than "labels and conclusions" or a "formulaic recitation of the elements of a cause of
12 action." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotation omitted). The complaint must set
13 forth coherently "who is being sued, for what relief, and on what theory, with enough detail to
14 guide discovery." *See McHenry v. Renne*, 84 F.3d 1172, 1178 (9th Cir. 1996). "Factual
15 allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 550
16 U.S. at 555. To survive a motion to dismiss, a complaint must "contain sufficient factual matter
17 . . . to state a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678 (quotation
18 omitted). A complaint must also be based on a cognizable legal theory. *See Solida v. McKelvey*,
19 820 F.3d 1090, 1096 (9th Cir. 2016) (simplified) ("[D]ismissal can be based on the lack of a
20 cognizable legal theory.").

21 I apply a two-step approach when considering a motion to dismiss. First, I must accept as
22 true all well-pleaded factual allegations and draw all reasonable inferences from the complaint in
23 the plaintiff's favor. *Iqbal*, 556 U.S. at 678; *Brown v. Elec. Arts, Inc.*, 724 F.3d 1235, 1247-48

1 (9th Cir. 2013) (quotations omitted). Legal conclusions, however, are not entitled to the same
2 assumption of truth even if cast in the form of factual allegations. *Iqbal*, 556 U.S. at 679; *Brown*,
3 724 F.3d at 1248 (quotation omitted). Mere recitals of the elements of a cause of action,
4 supported only by conclusory statements, do not suffice. *Iqbal*, 556 U.S. at 678.

5 Second, I must consider whether the factual allegations in the complaint allege a
6 plausible claim for relief. *Id.* at 679. A claim is facially plausible when the complaint alleges
7 facts that allow the court to draw a reasonable inference that the defendant is liable for the
8 alleged misconduct. *Id.* at 678. Where the complaint does not permit the court to infer more than
9 the mere possibility of misconduct, the complaint has “alleged—but it has not shown—that the
10 pleader is entitled to relief.” *Id.* at 679 (quotation omitted). When the claims have not crossed
11 the line from conceivable to plausible, the complaint must be dismissed. *Twombly*, 550 U.S. at
12 570. “Determining whether a complaint states a plausible claim for relief will . . . be a context-
13 specific task that requires the [district] court to draw on its judicial experience and common
14 sense.” *Iqbal*, 556 U.S. at 679.

15 State Farm argues that all of the insureds’ claims arise under NRS § 686B.050(1)’s
16 prohibition of “excessive” premiums, and that the NDOI has exclusive jurisdiction to enforce
17 that provision of the insurance code. The insureds respond that I have jurisdiction to resolve
18 legal claims.

19 Under Nevada law, “the NDOI has exclusive original jurisdiction over . . . any matter in
20 which . . . a party seeks to ensure compliance with the [i]nsurance [c]ode.” *Allstate Ins. Co. v.*
21 *Thorpe*, 170 P.3d 989, 994 (Nev. 2007). But NDOI’s exclusive jurisdiction “does not foreclose
22 actions for tortious and contractual bad faith against first-party insurers.” *Id.* at 996. Rather, I
23 must consider “the substance of the [plaintiffs’] claims,” and if issues reserved to the NDOI “are

1 not predominant” then they “are not clearly within the [agency’s] exclusive jurisdiction.” *Nev.*
 2 *Power Co. v. Eighth Jud. Dist. Ct. of Nev. ex rel. Cnty. of Clark*, 102 P.3d 578, 586-87 (Nev.
 3 2004) (en banc); *but see Jafbro, Inc. v. Am. Fam. Mut. Ins. Co.*, Nos. 57058, 57524, 2012 WL
 4 1142262, at *2-3 (Nev. Apr. 2, 2012) (elaborating that the carve-out does not apply where
 5 plaintiffs “incorrectly pigeonhole[] all [their] claims as common law . . . claims even though” the
 6 claims clearly rely on issues “committed to the Insurance Commissioner’s exclusive
 7 jurisdiction”).

8 Here the insureds’ claims rely wholly on enforcement of NRS § 686B.050(1)’s
 9 prohibition of excessive premiums. Thus, the substance of their claims predominantly concerns
 10 an issue over which the NDOI has exclusive jurisdiction. Absent any basis for their claims
 11 (contractual provisions, representations,² etc.) other than NRS § 686B.050(1), the NDOI retains
 12 exclusive jurisdiction over this dispute. Thus, the insureds fail to state a cognizable claim over
 13 which I have jurisdiction. While I doubt the insureds can plausibly allege claims against State
 14 Farm that are not predominantly couched in provisions of the insurance code, I grant them leave
 15 to amend because it should be “freely give[n] . . . when justice so requires.” Fed R. Civ. P.
 16 15(a)(2).

17 II. CONCLUSION

18 I THEREFORE ORDER that defendant State Farm Mutual Automobile Insurance
 19 Company’s motion to dismiss (ECF No. 13) is GRANTED.

21 ² While State Farm allegedly represented to the insureds that it “works hard to offer [them] the
 22 best combination of price, service, and protection,” statements of opinion or puffery are not
 23 actionable because they are not objectively false. ECF No. 2 at 18; *Or. Pub. Emps. Ret. Fund v.*
Apollo Grp. Inc., 774 F.3d 598, 606 (9th Cir. 2014); *see also, e.g., Bulbman, Inc. v. Nev. Bell*,
 825 P.2d 588, 592 (1992) (commendatory sales talk is not actionable in fraud). This is the only
 representation pleaded by the insureds that could have served as a basis for its claims.

1 I FURTHER ORDER that the insureds may file an amended complaint if facts exist to do
2 so. Failure to file an amended complaint by April 8, 2022 will result in dismissal of this case
3 with prejudice.

4 DATED this 11th day of March, 2022.



ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE